IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1588 OF 2004

Union Of India ...Applicant

Versus

Shri Girish N.Matalia & Ors. ...Respondents

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Mr.D.N.Salvi for Applicant.

Mr.S.Garad i/b M/s.Khaitan & Jayakar for Respondents 1 to 3.

Mr.A.S.Gadkari, A.P.P. for Respondent No.4.

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CORAM: A.M.KHANWILKAR, J.

JANUARY 28, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Application is for cancellation of bail granted to the Respondents by the lower Court on 12th December 2002 on the ground that the

Respondents have not complied with the direction requiring them to appear before the Investigating Officer, pursuant to the summonses to be issued in that behalf. In the application and further affidavits filed before this Court, at least sixty instances have been pointed out when summonses have been issued to the Respondents, but the Respondents did not bother to appear before the Investigating Officer. Eventually, present Application came to be filed on 13th November 2003. Even after filing of the present Application, the Respondents did not co-operate with the Investigating Officer inspite of issuance of fresh summonses. That position is established from the record filed before this Court. This Application came up for hearing on 20th October 2004 before Justice Anoop V.Mohta, when after hearing both sides, this Court gave one more indulgence to the Respondents to appear before the Investigating Officer between 25th October 2004 to 29th October 2004 and produce necessary records, as may be required. Indeed, the Respondents appeared before the Investigating Officer on the relevant dates and produced some documents. However, grievance is made on affidavit by the

Investigating Officer Mr.T.C.Maurya, Assistant Commissioner (Preventive) of Central Excise that specific demand to produce books of accounts of M/s.Giriraj Minerals Ltd., M/s.Pallavi Gems Pvt.Ltd., M/s.Mahudi Gems Pvt.Ltd. and M/s.Stars International Pvt.Ltd. was made, but the same has not been complied with so far. According to the Respondents, it is submitted across the bar, on instructions, that relevant records in relation to M/s.Pallavi Gems Pvt.Ltd. and M/s.Mahudi Gems Pvt.Ltd. have been submitted. This submission is, however, countered by the Applicant by stating that what has been produced is only summary of the accounts and not the books of accounts, which are necessary for the purpose of investigation. Besides, no document has been submitted with regard to the other two companies.

3. To get over this position, Respondents contend that Respondents have no concern with the Companies referred to hereinbefore. This submission clearly overlooks the fact that the registered office of all these companies are same, from where, the Respondents are managing the

affairs. Besides, it is fairly accepted that one of the Respondent is Director of the said Company. If it is so, it clearly follows that the Respondents are not extending necessary co-operation for the investigation of the case, merely because they are availing bail granted by the lower Court. Inspite of granting indulgence on more then one occasion, the Respondents have not bothered to even produce the books of accounts as requisitioned.

4. Taking overall view of the matter, I am of the view that the Applicant is justified in asking for cancellation of bail granted to the Respondents. Accordingly, Application is granted in terms of prayer clause (a).

5. If the Respondents comply with the requisitions given by the Investigating Officer and if the Investigating Officer is satisfied in that behalf, it will be open to the Respondents to apply to this Court for appropriate relief, if so advised.

6. The Respondents shall surrender before the Investigating Officer on or before 31st January 2005, failing which, it will be open to the

Investigating officer to proceed against the Respondents in accordance with law.

7. Application disposed of on the above terms.

A.M.KHANWILKAR, J.